



Record of Meeting

May 2013

Fourth Meeting of the Advisory Committee on Aviation Consumer Protection

*Prepared by CENTRA Technology, Inc.
Arlington, Virginia 22203*

RECORD OF MEETING
Fourth Meeting of the Advisory Committee on Aviation Consumer Protection

Meeting Date: May 21, 2013

Scheduled Meeting Time: 9:00 a.m. to 5:00 p.m., Eastern Time

Meeting Location: FAA Headquarters, 800 Independence Avenue SW, Washington, DC 20591

Public Notice: The Office of the Secretary (OST), Department of Transportation (DOT) informed the public of the Advisory Committee meeting in a Federal Register notice published May 3, 2013 (78 FR 26101).

Attendees:

Last Name	First Name	Affiliation
Abbott	Leslie	Southwest Airlines
Abramson	Shelton	Covington & Burling LLP
Berlin	Benjamin	Dow Lohnes PLLC
Biffle	Barry	Spirit Airlines
Blaney	James	British Airways
Burgoz	Mark	US Airways
Cronin	Aileen	Alaska Airlines
Derco	Drew	Eckert Seamans Cherin & Mellott, LLC
Dols	Jonathan	DOT
Gant	Catherine	Southwest Airlines
Gorman	Robert	DOT
Graber	Kim	DOT
Gros	Simon	Travelport
Hasbrouck	Edward	Independent Consumer Advocate
Higginbotham	Patricia	GBTA
Howard	Nigel	Covington & Burling LLP
Kelly	Tim	DOT
Lavin	Doug	IATA
Leber	Holly	Business Travel News
Lehman	Dayton	Capitol Business Solutions
Lowry	Richard	Spirit Airlines
Lowry	Nick	DOT
Lowy	Joan	Associated Press
Maddux	Jason	Garofalo Goerlich Hainbach PC
Markert	Alissa	United Airlines
Matal	Maren	US Airways

McElroy	Debbie	ACI-NA - Airports Council International
Mtambuzi	Kavaragu	Virgin America
Nguyen	Tony	The Travel Technology Association
Peck	Eben	ASTA
Podberesky	Samuel	DOT
Prentice	Ray	Alaska Airlines
Sahr	Evelyn	Eckert Seamans
Semanchick	David	ACPA
Strickman	Norman	DOT
Thumpston	Jim	Zuckert, Scoutt & Rasenberger
Vatis	Michael	Steptoe & Johnson LLP
Wilson-Beyah	Kali	Delta Air Lines
Workie	Blane	DOT
Zimmerman	Jonathan	FTC

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SUMMARY OF MEETING PROCEEDINGS
Fourth Meeting of the Advisory Committee on Aviation Consumer Protection

Welcome and Housekeeping Matters

Samuel Podberesky, Department of Transportation (DOT), Assistant General Counsel for Aviation Enforcement and Proceedings

Mr. Samuel Podberesky called the meeting to order at 9:08 a.m. He welcomed the attendees and the speakers and then turned the meeting over to The Honorable Lisa Madigan, Chairperson of the Committee.

Introductory Remarks

Lisa Madigan, Attorney General (AG), State of Illinois, Chairperson of the Committee

Chairperson AG Lisa Madigan welcomed the Committee and attendees. AG Madigan outlined the agenda for the day and called for a moment of silence to recognize the victims of the recent tornado tragedy in Oklahoma. Following the moment of silence, she outlined the proceedings for the day separated into two parts: 1) updates on DOT consumer protection compliance, enforcement and rulemaking activities made last year, and 2) discussions on the topic of privacy. Specifically, the privacy discussion would address the collection and protection of personal data. AG Madigan mentioned that the Federal Trade Commission (FTC) has noted that privacy is the number one complaint it receives from consumers.

Committee Member Charles Leocha emphasized the important task for the Committee of discussing privacy issues. Mr. Leocha noted that never before had consumers, the airlines, and the airports had a place to sit down together and solve common problems in this regard. He recognized that the Committee has made important strides and is moving in the right direction.

Committee Members Deborah Ale Flint and David Berg added that they looked forward to the day's proceedings as well as the upcoming year of the Committee's work.

Mr. Samuel Podberesky updated the attendees on vacancies within DOT. Transportation Secretary Ray LaHood is leaving and Anthony Fox, currently the Mayor of Charlotte, NC, has been nominated to replace him. The Aviation Enforcement Division has been affected by sequestration and two vacancies have yet to be filled while the Department remains judicious in spending.

Implementation of October 2012 Recommendations

Tim Kelly, Team Leader for Aviation Consumer Protection

Mr. Tim Kelly outlined the DOT's responses to the Committee's 2012 recommendations. The Secretary's report addressed a variety of subjects including: Travelers with Disabilities, Discrimination, Consumer Air Travel Complaints, Enhanced Information about Rights,

Understanding Contract Terms, Pricing Transparency, Ticket Agent Disclosures, and On-time Performance Reporting for all Carriers.

To improve travel experiences for travelers with disabilities, the Committee recommended that DOT encourage airlines and airports to take voluntary steps towards this goal; the Secretary of Transportation will send a letter to associations for airports and for U.S. and foreign air carriers to address this recommendation.

Additionally, the Committee recommended that the Department encourage airline and airport personnel to work with the Transportation Security Administration (TSA) to assist travelers who are unable to sit during lengthy layovers or to make connections safely without their specially made wheelchairs. The Transportation Secretary's letter to carrier and airport associations will ask them to urge members to return passenger wheelchairs at connecting airports if requested.

The Committee also recommended that the Department work with airlines and airports to make their kiosks and web sites accessible to disabled persons; a pertinent rulemaking proceeding is underway.

Lastly, the Committee recommended that the Department require airports and airlines to ensure appropriate access to service animal relief areas at airports; a pertinent rulemaking proceeding is also underway.

To prevent discrimination based on race, religion, national origin, and gender, the Committee recommended that the Department remind airlines of their obligation to avoid such discrimination and encourage them to stress this in initial and recurrent training. The Secretary's letter to carrier associations will refer to federal statutes that prohibit such discrimination and stress the benefits of training.

To address concerns regarding consumer complaints, the Committee recommended that DOT provide complainants with contact information for the analyst handling the complaint, and indicate that this person can be contacted concerning the status of the complaint. Acknowledgment letters/emails have been revised to include a Case number automatically inserted as well as a central email address and phone number and a commitment to reply within one business day, in most cases, by an analyst working on the case. DOT believes it would not be feasible to provide an individual analyst contact in the response itself. Additionally, the Committee recommended that DOT outline the complaint handling process to complainants by advising if it is a potential violation and that their complaints will be sent to carrier which will have 30/60 days to reply to consumer, after which a complainant should contact DOT if he/she does not receive a reply. Acknowledgment letters/emails now state if the subject of the complaint is covered by a DOT rule, the complaint will be sent to carrier for a response to consumer within the 30/60-day legal deadlines.

To enhance information about air travel consumer rights, the Committee recommended that DOT place its guidance on consumer rights and related FAQs in a prominent location on its web site.

New FAQs have been added on the Aviation Consumer office page and new links to that page are available from the DOT home page and “Aviation” page.

To provide better understanding of terms used in contracts of carriage and customer service plans, the Committee recommended that DOT survey how airlines define certain terms and place this information on DOT’s web site. The Secretary’s letter to airline associations will express his interest in an industry working group to define terms. The results will be posted on the DOT web site.

The Committee recommended that DOT take steps to ensure transparency in air carrier pricing, including ancillary fees. Consumer Rule II requires airline web sites to disclose fees for optional services and Consumer Rule III will address the issue of displaying ancillary fees through all sales channels, including Global Distribution Systems (GDS).

To encourage ticket agent disclosures, the Committee recommended that DOT require all ticket agents, including Online Travel Agencies (OTAs), to disclose if they do not sell tickets for all airlines and, if so, that additional airlines may serve the route being searched. Consumer Rule III will address the issue of whether ticket agents, including OTAs, should be required to disclose whether they do not sell tickets for all airlines.

To promote on-time performance reporting for all airlines, the Committee recommended that DOT require on-time performance data to be reported by all airlines, not simply those that account for one percent of domestic scheduled passenger revenue, as is currently the case. Consumer Rule III will address the issue of expanding the reporting-carrier pool to include smaller carriers.

At this time the Mr. Kelly introduced the next speaker, Ms. Blane Workie.

Rulemaking Activities

Blane Workie, Principal Deputy Assistant General Counsel

The Office of Aviation Enforcement and Proceedings is currently involved in nine active rulemakings, including three notices of proposed rulemakings (NPRMs) and six final rules:

- Four disability-related rulemakings
- Two consumer protection rulemakings
- One unauthorized operations rulemaking
- Two reporting rulemakings

A final rule on the “Use of the Seat-Strapping Method for Carrying a Wheelchair on an Aircraft,” was submitted to the Office of Management and Budget (OMB) in July 2012. The 90-day expected period for OMB clearance has already lapsed but the rulemaking may be cleared and issued shortly.

Another rulemaking that DOT expects will be issued soon as a final rule on “Accessibility of Carrier Websites and Ticket Kiosks” which was submitted to OMB in February 2013.

A final rule on “Accessibility of Airports” is expected to be submitted to OMB in June 2013. It is not clear whether the current schedule will be met. Monthly updates on significant DOT rulemakings are available at <http://www.dot.gov/regulations/>.

An NPRM on “Carrier-Supplied Medical Oxygen, In-Flight Entertainment Systems, Service Animals, and Accessible Lavatories,” which would address a number of measures to improve the air travel environment for passengers with disabilities is expected to be submitted to OMB in July 2013. This NPRM tackles issues that were not resolved in 2008 ACAA final rule such as in-flight entertainment and in-flight medical oxygen. Whether carriers should have to provide on-board oxygen and whether they should be able to charge for it remains to be determined. Additionally the NPRM would take up the issue of service animals, accessible lavatories and reporting of wheelchair assistance requests.

A final rule on “Reporting Ancillary Airline Passenger Revenues,” is expected to be submitted to OMB in July 2013. The issues addressed in this rulemaking consist of reporting of airline imposed fees, methodology for computing mishandled baggage rates, and statistics for mishandled wheelchairs/scooters.

An NPRM on “Enhancing Airline Passenger Protections III,” which would address whether the Department should enhance disclosure requirements on code share operations, expand the scope of on-time performance reporting to include smaller carriers, adopt minimum customer service standards, require ticket agents to disclose whose tickets they do or do not sell, and require that ancillary fees be displayed through all sale channels was submitted to OMB in April 2013.

A final rule on “Smoking of Electronic Cigarettes on Commercial Aircraft” is expected to be submitted to OMB in August 2013.

A final rule on “Reports by Air Carriers on Incidents Involving Animals during Air Transport” is expected to be submitted to OMB at a date to be determined. A rulemaking schedule will be developed as soon as DOT completes its review of the more than 5,000 comments received on the proposal.

An NPRM for the charter broker/operator industry which would address the NTSB recommendation that certain information be disclosed to customers at the time an air charter contract is arranged is expected to be completed in May 2013.

Future consumer protection rulemakings to implement the FAA Modernization and Reform Act of 2012 may be wrapped together in one rulemaking. Such a rulemaking may address a variety of topics such as tarmac delays, consumer complaints and the carriage in the passenger compartment of musical instruments.

At this time Ms. Workie introduced the next speaker, Mr. Jonathan Dols.

Recent Enforcement Activities and Initiatives

Jonathan Dols, Deputy Assistant General Counsel

Mr. Dols began by indicating that the jurisdiction of the DOT over air transportation is based primarily on economic issues, in contrast to the safety matters, which are the focus of the FAA. The DOT regulates direct and indirect carriers as well as ticket agents. The latter are defined as persons other than air carriers that sell transportation, including, for example, GDSs.

Regulated areas include civil rights, unauthorized operations, and consumer protection. The last area includes the regulation of advertising practices as well as tarmac delays and chronically delayed flights, refunds, and baggage liability.

Cases originate through a variety of channels including competitor complaints, consumer complaints, and via DOT's own initiative through its onsite inspection program.

Once it has received the complaint, whether from the industry or from a consumer, the Department's Office of Aviation Enforcement and Proceedings (the Enforcement Office) analyzes it, assesses probable cause, and begins a formal or informal enforcement process. The most common approach is the informal process, which can lead to various outcomes of increasing severity ranging from a non-punitive warning letter to formal consent orders assessing civil penalties. In rare cases, criminal sanctions may be sought.

Since 2008, there have been 25 onsite inspections, an average of five per year, featuring three- to five-person teams. The inspections are comprehensive in scope and are currently being expanded to public charter operators and foreign air carriers.

The 2010-2011 rulemakings established a wide array of additional consumer protections. The Consumer I and II rulemakings included many new requirements, notably the enforcement of the full fare rule explicitly, and addressed tarmac delays, codeshare disclosure compliance, baggage liability limits, and public charter compliance.

Committee Member Charlie Leocha began the question and answer period. Mr. Leocha asked the panel if the more aggressive opposition to new regulations by carriers was resulting in delays of NPRMs. Ms. Workie responded that the issue was rather one of not having enough economists on staff to conduct the necessary cost-benefit analyses. Mr. Leocha then expressed concern about the mishandling of baggage even as increased fees caused a decrease in the number of bags. Committee Member David Berg disputed the data on falling baggage numbers. Mr. Podberesky noted that DOT had seen some improvement in baggage handling even among carriers not charging baggage fees.

Mr. Leocha also asked about the threshold for airline on-time reporting that excluded small carriers such as Allegiant and Spirit. Ms. Workie asserted that the Department is not targeting one specific airline with this threshold, noting that Virgin, a relatively small carrier, is also required to report.

An audience member asked about civil penalties assessed carriers and whether the Department considers mitigating factors in cases such as tarmac delays. Ms. Workie noted that all consent orders have been settlements and that the Department does consider mitigating factors such as weather. Mr. Leocha then mentioned the FAA reauthorization bill and Consumer Rule III with regard to tarmac delay enforcement. Ms. Workie stated that Consumer Rule III does not directly address tarmac delays but tarmac delay issues such as comfortable cabin temperatures will likely be addressed in future rulemakings.

Thomas Canfield, the General Counsel for Spirit Airlines, commented with regard to the on-time reporting threshold, which applied reporting to those carriers with at least one percent of total domestic enplanements, and noted that reporting on-time performance imposes greater costs on smaller airlines.

Chairperson AG Lisa Madigan introduced Committee Member Charlie Leocha and he spoke about the importance of privacy in the context of high Internet usage and personal information exchange.

Data Privacy and Air Travel: Introduction

Charles Leocha, Consumer Travel Alliance

Mr. Leocha began his remarks by praising the work of the Committee and the coming together of stakeholder parties including the FTC, DOT, and airlines. He noted the vulnerability of traveler data especially given the expectation of seamlessness in travel; however, the competing jurisdictions of the FTC, DOT, and state laws often obscure responsibility for privacy requirements. Mr. Leocha referenced a recent privacy case in which Delta won a dismissal of claims based on federal preemption. In addition to collection of data, Mr. Leocha also expressed concern over disclosure of data usage by the airlines. He expressed hope that the discussion would lead to an aviation sector blueprint of best practices for all parts of industry.

Data Privacy and Air Travel: DOT Authority

Robert Gorman, Senior Attorney, C-70, DOT

Mr. Robert Gorman of the DOT presented on the legal “lay of the land” with regard to the privacy of data on airline travelers. He began with the federal statutory authority on privacy issues, then addressed DOT’s jurisdiction over airline travel, and concluded with a look toward the future. Current federal statutes over privacy do not address the airline industry and the proposed Consumer Bill of Rights with respect to personal information has not passed. DOT’s authority covers unfair and deceptive practices in air transportation and extends over air carriers and ticket agents. Additionally, Mr. Gorman noted that federal law generally preempts state law with regard to regulating the rates, routes and services of air carriers, and this preemption may apply to state privacy laws. DOT’s statutory authority also extends to the Children’s Online Privacy Protection Act which regulates the collection of data from children online and has a “carve out” clause that vests DOT with the authority to handle violations by airlines.

Additionally, the DOT requires that airlines collect and maintain certain personal passenger information for various legal purposes. Personal information held by the DOT itself is governed by the Privacy Act. The DOT has stated that an airline's violation of a passenger's privacy may be considered an unfair and deceptive practice.

Mr. Gorman referenced a significant case in this area, *Epic vs. Northwest Airlines*, over the transfer of data from a carrier to a research center to address threats post 9/11. The DOT considered the case carefully but determined that airlines often need to divulge information to the government for policy purposes and further decided that no injury came to the travelers. This case is instructive because it set forth the factors that the DOT would consider when determining whether an airline's use or disclosure of private information constituted an unfair or deceptive practice.

Data Privacy and Air Travel: FTC's Current Requirements

Jonathan Zimmerman, Senior Attorney, Division of Privacy and Identity Protection, FTC

Mr. Jonathan Zimmerman presented on the FTC's role in the protection of consumer privacy. He noted that as the landscape of the industry is changing and causing an overlap between DOT and FTC jurisdiction, the agencies must work beyond Section 5 of the FTC Act, which gives the commission broad authority to regulate unfair and deceptive practices. The FTC's standard is that companies must protect information and consider the reasons for collecting it, what they are doing with it, and what they are disclosing to consumers. Mr. Zimmerman further explained that a breach in the protection of private data does not necessarily signify poor practices just as absence of a breach may not indicate good practices.

Enforcement actions have been brought for both unfair and deceptive practices against some of the biggest names in industry and some smaller companies. Mr. Zimmerman referred to the cases against Path and Myspace, two social media sites, as well as HTC America and Twitter to show the variety of FTC's enforcement mechanisms and available remedies. The lessons from these cases indicate the importance of adhering to stated privacy policies, retaining only necessary information, disposing of information properly, and remaining aware of common threats.

Mr. Zimmerman expanded on the requirements within the Children's Online Privacy Protection Act (COPPA) and stated that a new version of guidance will be coming in July 2013.

The FTC has frequent communications with industry and promotes workshops and education initiatives for companies on privacy issues. Specifically the FTC advocates three main principles: 1) adopting privacy by design: 2) simplifying privacy choices: and 3) improving transparency.

Data Privacy and Air Travel: State Privacy Laws

Nigel Howard, Partner, Covington and Burling

Mr. Nigel Howard from Covington and Burling presented on how state laws contribute to and inform privacy practices. There is a high variance and volume of state privacy activities with

many states operating their own “mini-FTCs.” For airlines and other businesses, this can be troublesome as this can lead to conflicting sets of requirements and asymmetrical application of policies.

Mr. Howard noted that California has been at the forefront of privacy protection among U.S. states specifically with regard to the clarity, transparency, and prominence of online privacy policies, while Massachusetts and Nevada have narrower, more prescriptive security requirements.

Mr. Howard pointed out that nearly every state has a breach notification law though they vary greatly in their individual requirements. The variety in requirements may create undue hardship for business and may undermine the goal of getting timely information to consumers.

Mr. Howard further cited two cases in 2005 in which airlines gave personal information to the TSA in which issues of jurisdiction were debated and airlines were ultimately required to uphold passenger rights.

Airlines try to follow state law even when preempted by federal statute in large part because of the role of bad publicity inherent in a consumer-facing business. For this reason state laws often inform best practices in the privacy area. Mr. Howard concluded by noting that GDSs are not subject to the same pressures as they do not deal directly with the consumer.

Committee Member Ale Flint opened the questioning by asking about whether Payment Card Industry (PCI) standards apply to the carriers or OTAs. Mr. Howard responded that security standards are most important to airlines and that it is a best practice to insist on PCI standards in contracts.

Committee Member Leocha asked about responsibility on web sites for third party data collectors. Mr. Zimmerman responded that it is the responsibility of the operator of the site to control what is collected by third parties. Mr. Leocha also asked about personally identifiable information (PII) on paper documents related to travel and Mr. Zimmerman acknowledged the importance of proper disposal. Mr. Leocha mentioned the challenge surrounding protecting data associated with mobile devices which Mr. Zimmerman acknowledged carried higher stakes due to the quantity of information held on mobile devices, while noting that the principles associated with each are the same.

In response to a question raised by Chairperson Madigan, Mr. Zimmerman stated that privacy complaints accounted for 18 percent of the total number of complaints received by the FTC.

Mr. Paul Ruden of the American Society of Travel Agents asked how determinations are made based on the word “immoral” in privacy requirements. Mr. Podberesky cited examples of airlines selling personal information for children or medical information of passengers.

The committee broke for lunch at approximately 12:30 PM and returned at approximately 1:30 PM.

Airline and Industry Background: Airline Presenters

Russell Hubbard, American Airlines

Aileen Cronin, Alaska Airlines

Kali Wilson-Beyah, Delta Air Lines

Following the lunch break, Committee Member Berg introduced the next panel of presenters which provided an overview of the regulatory and legal landscape relating to privacy issues. The panel consisted of Russell Hubbard, American Airlines; Aileen Cronin, Alaska Airlines; and Kali Wilson-Beyah, Delta Airlines.

Ms. Wilson-Beyah began by noting the importance airlines place on protecting customer information. She also noted that the airlines are highly regulated. DOT oversees advertising, baggage fees, etc. while FAA covers flight operations, safety, and maintenance. Other agencies also require that airlines collect additional information: TSA requires companies to collect full name, date of birth, and a redress number while Customs and Border Patrol (CBP) requires airlines to supply Advance Passenger Information System (APIS) data.

The legal privacy framework guiding airlines is extensive. In the financial sphere, airlines are regulated by the Graham Leach Bliley Act, the Fair Credit Reporting Act, and Sarbanes-Oxley Act (SOX). In the medical area, the Health Insurance Portability and Accountability Act (HIPPA) prescribes practices regarding personal information. Both telecommunications and online activities are increasingly regulated. Internationally, the Personal Information Protection and Electronic Documents Act (PIPEDA) and the European Union (EU) Privacy Directive regulate what personal info can be collected.

Next Mr. Russell Hubbard noted the extent of passenger data required to be collected by airlines, stating, however that the TSA Secure Flight program had shifted the responsibility of collecting some data from the airlines to the TSA.

A variety of entities collect passenger data throughout the travel process, including air carrier web sites and call centers, brick and mortar travel agencies, online travel agencies, metasearch engines, and general search engines.

Customer information is used for a variety of purposes. In some cases, information must be shared with business vendors, such as, for example, arranging for wheelchair assistance for those who need it. When dealing with third party vendors, air carriers are especially careful with information and require strict contracts for the processing of information. GDSs may be more problematic as they have leverage over the data and may want to use it for other purposes while facing fewer pressures associated with being non-customer facing. Google and other big data aggregators also raise privacy concerns with regard to customer data. While innovation in travel transactions is welcome, Mr. Hubbard concluded airlines must continue to ensure personal data are protected.

Finally Ms. Aileen Cronin listed the generally accepted privacy principles that guide airlines, which are motivated to protect consumer data and try to avoid negative public feedback. These principles include: management, notice, choice and consent, collection, use, retention, and disposal, access, disclosure to third parties, security for privacy, quality, as well as monitoring and enforcement. Ms. Cronin then listed technical standards and frameworks for security over information including: NIST, COBIT, PCI-DSS, ISO 27001 and 27002, as well as SSAE 16 and SOC Type 1 & 2. Security practices often employed include: encryption, vulnerability management, patch management, PEN testing, user provisioning, audits, system hoarding, as well as monitoring & logging. Onsite physical controls are also important.

Airline and Industry Background: GDS Representative

Michael Vatis, Partner, Steptoe & Johnson, LLP

Next, Mr. Michael Vatis from Steptoe and Johnson, LLP spoke on behalf of the GDSs. He began by explaining the role of GDSs in the air travel system. First, airlines provide GDSs with information about seat availability and prices, information with which GDSs allow consumers to make bookings and changes. Most air carriers participate with all GDSs. Travel agents have agreements with air carriers under which they are authorized to sell tickets, enter relevant data into a GDS, and create a passenger name record (PNR). The PNR contains details about the passenger including name, itinerary, contact information, ticket information, and “received from field” (i.e., the travel agent who has created or modified the ticket). Only the agent, airline, and GDS have access to the PNR unless one of them permits access to third party. The GDS, which has no direct dealing with the consumer, does not distribute information unless required by law or as necessary. The GDS holds data for 72 hours after a flight before disposing of it but can hold onto some data for as much as three years in order to resolve potential billing disputes.

Each GDS has programs designed to protect the consumer, such as the technical, physical, and administrative measures taken to protect data. Passenger data is only collected on a need to know basis and is not shared with other agents. There are different protection approaches taken by the European Union and United States. In the European Union, law number 80/2009 regulates GDSs through an established code of conduct. Additionally, EU laws state that personal data should only be processed such that a contract can be fulfilled and sensitive data may only be processed where the subject has given explicit consent. Entities involved with processing data must comply with the 95/46/EC data privacy directive. Data must be accurate and up-to-date and can only be processed for the performance of a contract, in compliance with the legal obligation to protect the vital interests of the data subject, or for a task carried out in the public interest. Additionally, companies may not transfer data to another country that does not have the same privacy policies. The United States as a whole has not been deemed by the European Union to provide adequate protection. However, under the EU-United States Safe Harbor Framework, EU data can be transferred to U.S. companies that certify that they will abide by the Safe Harbor principles.

Airline and Industry Background: Travel Agent Presenters

Stan Brown, Omega World Travel

Paul Ruden, American Society of Travel Agents

Next Mr. Paul Ruden of the American Society of Travel Agents (ASTA) introduced Mr. Stan Brown of Omega World Travel to present on the role of travel agents in protecting customer information. Mr. Brown began by emphasizing the importance that Omega World Travel places on protecting customer information, particularly given their government clients. Information collected by Omega includes: frequent flyer number, mobile phone number, email addresses, special requests, and corporate discount numbers.

Omega World Travel places a high importance on securing this information. Mr. Brown noted Omega's operation of a secure data network and periodic updates to its security and privacy policies. Mr. Brown also explained that customer information is never given to third parties without permission and client lists are never sold. In addition, Omega has in place a number of security measures that prevent access through hacking or viruses. Reservations made through online booking services as well as accounting information are also well protected.

Following Mr. Brown's presentation, Mr. Ruden read a statement prepared by a group of online travel agencies. The statement is transcribed below:

“The major online travel companies are deeply committed to the protection of their respective customers' personal information. The information consumers provide enables them to understand and improve customer travel needs, develop world-class products and services, tailor customer communications, provide enhanced customer service, comply with laws and regulations, and protect against fraud. As such, the Travel Technology Association is deeply committed to ensuring policies and practices relating to consumer data are aligned with industry standards and are strictly adhered to. Reputable online travel companies take the steps necessary to safeguard that information through enforcement of privacy policies, certifications with third party privacy groups, Safe Harbor compliance, and strict contractual provisions with suppliers and vendors around the treatment of any consumer information they have access to.”

Consumer Viewpoints

Edward Hasbrouck, Independent Consumer Advocate

Following these presentations on the air travel industry, Committee Member Leocha introduced Mr. Edward Hasbrouck, an independent Consumer Advocate, to present on the consumer side of privacy concerns. In his presentation, Mr. Hasbrouck sought to address travel privacy through a consumer lens. He stressed that the core of the problem emerged in the commercial sector.

Mr. Hasbrouck emphasized that problems lie in the practices of industry participants rather than their statements of policy. Airlines, travel agencies, as well as Computer Reservation Systems (CRS) and GDSs do not inform consumers to which entities they provide their data. Additionally, no companies have established limits on data collected. In addition to opaque practices surrounding airfares, personal information retained by the industry is vulnerable, Mr.

Hasbrouck maintained, to criminals such as stalkers and abusers. The GDS system is especially vulnerable and current threat modeling is misguided. While most companies assess threats from outside intruders, Mr. Hasbrouck believes that insider threats from authorized users are more acute.

Mr. Hasbrouck expressed concern over the number of privacy breaches, citing technical failure in access logs that prevent a full accounting of incidents, particularly with regard to “look but don’t touch” attacks that leave no traces. The system is structured to make sure we do not know about attacks.

Additionally, a problem exists with the lack of accountability for privacy intrusions industry-wide. Given the interrelated businesses in air travel, no one company will acknowledge personal data is its own domain. This is made more confusing when travel packages involve multiple suppliers of both air travel service and ground services.

Lastly, Mr. Hasbrouck stressed the DOT’s need to take on a leading role with regard to privacy. He noted that no words about privacy appear on DOT’s web site and stressed the need for privacy to be a category on the forms and reports presented on the web site. He also noted that the DOT did make a public commitment in Safe Harbor and that specific principles enhance the authority of DOT. Mr. Hasbrouck offered three recommendations for DOT: 1) if privacy commitments are made, they become enforceable; 2) privacy needs to be on all forms; and 3) there needs to be a working group within DOT. Mr. Hasbrouck concluded by stating the airline industry has been a leader in use of IT and embraced e-commerce before others; however, DOT has not taken on the commensurate leading role on privacy and must make strides to that effect.

Airline/Consumer Panel Discussion

Committee Member Leocha opened up the question and answer period by asking Ms. Aileen Cronin about the “notice” privacy principle and who consumers should contact when they have concerns about privacy policies. Ms. Cronin responded that the policy statement and point of contact that appears when the consumer is entering their data is the best source of information. Mr. Leocha also expressed concern about the event of a codeshare flight when a consumer travels with multiple airlines with differing privacy policies on the same trip. Mr. Podberesky responded that each portion of the trip would be covered by the marketing carrier’s privacy policy. Mr. Leocha noted the complexities in air travels and the confusion this causes among many consumers.

Mr. Hasbrouck then noted the problems with granular data structure and the lack of information associated with the PNR, specifically with regard to where the data were collected. Mr. Vatis countered that a record is kept of who entered the data and who modified it.

Chairperson Madigan asked how long data are held by airlines and Ms. Cronin responded that the data are classified by record type and the length of holding varies greatly from 30 days to eight years.

Committee Member Leocha then asked about package deals that include car rentals and how the different points are handled with regard to privacy. Ms. Workie responded that DOT handles complaints within its jurisdiction and sends along the other pieces to the relevant agencies.

Chairperson Madigan asked the airline presenters if their companies were required to report if a breach had taken place. Each airline presenter was able to point to an example of a breach, though most were perpetrated against employees rather than consumers.

Committee Member Leocha noted that given the FTC's high reporting of privacy incidents, the lack of air travel incidents with privacy was unusual. Mr. Ruden countered that this could indicate that the air travel industry has been doing a good job on privacy issues and the low reporting number is evidence of success. Mr. Podberesky concluded the question and answer period by pointing out the commercial sensitivity within the airline industry itself with regard to personal information of customers as another reason for its enhanced security.

Chairperson Madigan thanked everyone for attending and adjourned the meeting at approximately 3:30 PM.

Copies of the PowerPoint presentations by the speakers have been placed in the Advisory Committee's docket (DOT OST 2012-0087).

COMMITTEE MEMBER BIOGRAPHIES

The Honorable Lisa Madigan

Ms. Madigan is Attorney General (AG) of Illinois and officially chairs the Advisory Committee on Aviation Consumer Protection. AG Madigan serves as a representative of state and local governments with the Committee. She was elected the first woman Attorney General of Illinois in 2002 and won a third term in 2010. As Attorney General, her priorities have included protecting consumers from financial fraud and unsafe products, as well as protecting seniors in nursing homes.

Deborah Ale Flint

Ms. Ale Flint serves as a representative of airport operators with the Advisory Committee on Aviation Consumer Protection. She was appointed Oakland International Airport's Director of Aviation in 2010. Ms. Ale Flint is the primary executive responsible for the operation, management, and development of the airport. She previously served as manager of the airport's airside operations where her responsibilities included noise abatement and environmental compliance.

David A. Berg

Mr. Berg serves as a representative of air carriers with the Advisory Committee on Aviation Consumer Protection. He was named Senior Vice President, General Counsel and Corporate Secretary for Airlines for America (A4A) in 2011. At A4A, Mr. Berg is responsible for the association's legal affairs and has been involved in a variety of aviation issues, including passengers with disabilities and airport landing fees.

Charles Leocha

Mr. Leocha serves as a representative of aviation consumers with the Advisory Committee on Aviation Consumer Protection. He is Director of the Consumer Travel Alliance (CTA) which he formed in 2009, following a career in journalism where he specialized in reporting on travelers' rights. Since beginning CTA, his advocacy for travelers has included meeting government officials, testifying before Congress and developing travel information and resources.